GPK

SUPREME COURT OF THE UNITED STATES.

No. 98.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

NINE CASES SILK HATS, PAUL TRICOU, CLAIMANT.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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Circuit court of the United States, fifth circuit, and eastern district of Louisiana.

A transcript of the record and proceedings in the suit of the United States vs. Nine Cases of Silk Hats, No. 2037 of the docket.

Extract from the minutes of said court, of date June 12th, A. D. 1851.

Present: Hon. Theo. H. McCaleb, district judge.

THE UNITED STATES vs. NINE CASES OF SILK HATS. } No. 2037.

On motion of Logan Hunton, United States district attorney, and on filing his petition representing to the court that he verily believes there is error in the judgment rendered in this cause by the honorable the district court of the United States, for the eastern district of Louisiana, and praying for a writ of error, returnable to the next term of this court; it is ordered that the same be issued as prayed for.

Writ of error issued the 12th June, A. D. 1851.

UNITED STATES OF AMERICA:

The President of the United States, to the judge of the district court of the United States, for the eastern district of Louisiana, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States and Nine Cases of Silk Hats, Paul Tricou, claimant, a manifest error has happened to the great damage of the said United States, as by their complaint appears, we being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the circuit court of the United States, for the 5th circuit, and eastern district of Louisiana, together with this writ, so that you have the same at New Orleans, in the said district, on the third Monday in December next, in the said circuit court to be then and there held; that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, at New Orleans, this 12th June, A. D. 1851. [SEAL.]

J. W. GURLEY, *Clerk.*

Transcript from the U. S. district court.—Filed 17th Dec., 1851.

UNITED STATES DISTRICT COURT, Eastern dist. of Louisiana.

The UNITED STATES OF AMERICA
vs.
NINE CASES OF SILK HATS. } No. 6692.

Be it remembered that heretofore, to wit, on the twenty-seventh day of July, A.D. 1850, Logan Hunton, esq., attorney of the United States for the said eastern district of Louisiana, appeared, and in the office of the clerk of the U. S. district court for said district, caused to be filed under the 66th section act 2d March, 1799, 4th section act 1830, the following

Libel of Information.

July 28, 1850.

UNITED STATES OF AMERICA, *Eastern dist. of Louisiana, District court, May term*, 1850.

To the honorable Theo. H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana:

Be it remembered that on this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and fifty, befor the honorable Theo. H. McCaleb, judge as aforesaid, comes, in his own proper person, Logan Hunton, attorney of the United States of America for the aforesaid district, and in the name and behalf as well of the United States as of Samuel J. Peters, esq., collector of the customs of the port of New Orleans in said district, and of all other persons concerned, propounds and gives the said judge to understand and be informed, that the said Samuel J. Peters, esq., collector as aforesaid, on the seventeenth day of July, in the year eighteen hundred and fifty, at the port of New Orleans in the district aforesaid, and within the jurisdiction of this honorable court, on land, did seize and now in his custody as being forfeited to the United States of America for the causes hereinafter mentioned, nine cases or packages of silk hats, five whereof are marked J J A, and numbered respectively 11, 12, 13, 14, 15; two whereof are marked J J A, and numbered 29, 30; and two whereof are marked P T, and numbered 16, 17. For that heretofore, that is to say on the twenty-fourth day of June, in the year eighteen hundred and fifty, the aforesaid goods, wares and merchandise, being of the growth, produce and manufacture of some foreign place or country to the said attorney unknown, were imported in a ship or vessel, being a ship called the Pyramid, from a foreign port or place, that is to say the port of Havre, to the port of New Orleans, in the collection district of New Orleans in the eastern district of Louisiana, which said goods, wares and merchandise are subject to the payment of duties in the United States on being imported as aforesaid. That an entry of the aforesaid goods, wares and merchandise, duly signed, was at the time of the said importation made at the office of the collector of the customs of the said port and district of New Orleans, and that on such entry being made as aforesaid, a

certain invoice of the goods, wares and merchandise included in said entry was produced and left with the said collector of the customs of the port and district of New Orleans, and that the aforesaid goods, wares and merchandise of which an entry was made as aforesaid, and of which a certain invoice was produced and left as aforesaid, were not invoiced at the actual cost thereof at the place of importation, but were in fact invoiced at less sums than the actual cost thereof at the place of exportation, with design to evade the duties thereupon or some part thereof; whereby, and by force of the statute in such case made and provided, the said goods, wares and merchandise have become and are forfeited to the uses in the said statute prescribed.

And for that also the aforesaid goods, wares and merchandise, being subject to the payment of ad valorem duties on being imported into the United States, an entry thereof duly signed was at the time of the aforasaid importation thereof made at the office of the collector of the customs of the aforesaid port and district of New Orleans, and that on such entry being made as aforesaid, a certain invoice of the goods, wares and merchandise included in the said entry was produced and left with the said collector of the customs of the said port and district of New Orleans, and that the said collector of the port and district aforesaid thereupon, that is to say on the twenty-ninth day of June, in the year eighteen hundred and fifty, at the port and in the district aforesaid, according to the statute of the United States in such case made and provided, caused the aforesaid packages of the said goods, wares and merchandise to be opened and examined, and upon such examination of the said packages, and upon a due inspection and appraisement of the goods, wares and merchandise contained in the aforesaid entry made as aforesaid, and in the aforesaid invoice produced and left as aforesaid, it was found, and is hereby charged, that the aforesaid packages did not correspond with the invoice aforesaid, and that the aforesaid packages and the aforesaid invoice were made up with intent, by a false valuation, to evade and defraud the revenue of the United States; whereby, and by force of the statute in such cases made and provided, the said goods, wares and merchandise have become and are forfeited to the uses in the said statutes prescribed.

And for that also the aforesaid goods, wares and merchandise, being subject to the payment of ad valorem duties on being imported into the United States, an entry thereof duly signed was at the time of the said importation thereof made at the office of the collector of the customs of the port and district of New Orleans, and that on such an entry being made as aforesaid, a certain invoice of the goods, wares and merchandise included in the said entry was produced and left with the said collector of the customs of the said port and district of New Orleans, and thus all and each of the said several packages contained in the said entry made as aforesaid, and in the said invoice produced and left as aforesaid, did not correspond with the said invoice, and that all and each of the said several packages contained in said entry made as aforesaid, and in the invoice produced and left as aforesaid, in which

the aforesaid goods, wares and merchandise were so imported and entered as aforesaid, were made up with intent, by a false valuation, to evade and defraud the revenue of the United States, contrary to the form of the statutes in such cases made and provided; whereby and by force of the statutes in such case made and provided, the said nine cases or packages of silk hats afore described became and are forfeited. Wherefore the said attorney of the United States prays the consideration of this honorable court in the premises, and for monition and other proper process, to the end that the said goods, wares and merchandise may be and remain forfeited, and be condemned by the definitive sentence and decree of this honorable court as forfeited to the use of the United States of America, according to the statutes in such case made and provided.

(Signed) LOGAN HUNTON,
United States attorney for the eastern district of Louisiana.

1849, October 5th.

Whereupon on the same day was issued from the clerk's office the following

Attachment and monition.

The president of the United States of America, to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the following goods, wares and merchandise now in custody of Samuel J. Peters, esq., collector of the customs, to wit: Nine cases or packages of silk hats, five whereof are marked J J A, and numbered respectively 11, 12, 13, 14, 15; two whereof are marked J J A, and numbered 29, 30; and two whereof are marked P T, and numbered 16, 17; the said articles of merchandise having, on this 27th July, 1850, by Logan Hunton, esq., attorney for and on behalf of the United States and their said collector, been with a view to their forfeiture for reasons set forth in the accompanying information, libeled in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, in or before the third Monday from the service hereof, to show cause, if any they can or have, why the said nine cases or packages of silk hats should not be condemned and decreed forfeited, and be sold agreeably to the prayer of the libellants; and how you have executed this attachment, you make return according to law.

Witness the honorable Theo. H. McCaleb, judge of the said court, this 27th day of July, 1850, and the 75th year of the independence of the United States.

[SEAL.]

(Signed) ROBT. M. LUSHER,
Deputy clerk.

Marshal's return.

Received July 27th, 1850, and on the 29th July, 1850, attached the 9 cases of silk hats as within described in the hands of Samuel J. Peters, esq., collector of the customs for this district, published monition, gave notice, and in all respects complied with the law and the commands of the warrant. Returned into court, August 20th, 1850.

(Signed) CHAS. A. LABUGAN,
Deputy marshal.

And afterwards, to wit, on the 2d August, A. D. 1850, came into the clerk's office Paul Tricou, owner, &c., with Messrs. Benjamin and Micou as proctors, and caused to be then filed the following

Claim and consent to appraisement and bond.

UNITED STATES
vs.
9 CASES OF SILK HATS. } U. S. district court.

The petition and claim of Paul Tricou, of New Orleans, respectfully shows, that he is the owner of the merchandise libeled and seized in this suit, and that he desires to recover the same on bond in form prescribed by law. Wherefore he prays that the merchandise aforesaid be appraised according to law, and that petitioner be authorized to bond the same, and receive the hands of the marshal, and for all other relief required.

(Signed) BENJAMIN & MICOU,
Of counsel.

Sworn to and subscribed at New Orleans, this 2d day of August, 1850, by Paul Tricou, who makes oath that the sole, true and bona fide owners of said merchandise are J. J. Albert and deponent, composing the commercial firm of Albert and Tricou, and that deponent is the duly authorized agent of his said company, owner and bona fide claimant of said goods. PAUL TRICOU.

Before signed, ROBT. M. LUSHER.

I agree that the property seized, to wit, nine cases of silk hats, may be declared to the above claimant and petitioner after due appraisement according to law, and upon his executing bond with good and sufficient sureties according to law and the practice of the court, August 2d, 1850; waiving however any order of court for the appraisement and bond.

(Signed) LOGAN HUNTON,
U. S. Attorney.

It is agreed that R. F. Canfield, R. Groning and Lazare Janin may act as appraisers in the above case.

(Signed) L. HUNTON,
U. S. Attorney.

(Signed) BENJAMIN & MICOU,
For claimant.

Whereupon, on the 8th day of August, A. D. 1850, were filed and recorded in the clerk's office the following

Oath of appraisers and appraisement.

EASTERN DISTRICT OF LOUISIANA,
U. S. District court, New Orleans.

The UNITED STATES
vs.
NINE CASES OF SILK HATS. } No. 6692.

Appraisers' oath.

Personally appearing before the undersigned, deputy clerk of said court, we, the undersigned, having been duly appointed appraisers to appraise the goods or merchandise mentioned in the above entitled suit, do severally, solemnly swear that we will faithfully and fairly appraise the same, and make a true report of the value both foreign and domestic thereof, according to the best of our understanding, without unnecessary delay.

(Signed) L. JANIN,
(Signed) R. F. CANFIELD,
(Signed) A. METEYE.

Sworn to and subscribed the 3d August, by Lazare Janin, and by R. F. Canfield, and A. Meteye, this 6th August, 1850, at New Orleans.

Nota.—The nine cases silk hats seized are described as being marked as follows: Five, J J A, and numbered 11, 12, 13, 14, 15; two, J J A, and numbered 29, 30; and two P T, numbered 16, 17.

Attest: (Signed) ROBT. M. LUSHER,
Deputy clerk.

Appraisers' report.

We appraise the nine cases of silk hats marked and numbered as described above, at five thousand francs as the foreign value, and seventeen hundred and four dollars the domestic value.

(Signed) R. F. CANFIELD,
A. METEYE,
L. JANIN.

New Orleans, 8th Aug't, 1849.

Mr. Benjamin, for Paul Tricou, assents to the substitution of Mr. A. Météyé for the appraiser first named, and does not object to the above.

Attest: (Signed) ROB'T M. LUSHER,
Sept. 25, 1850. *D'y clerk.*

And afterwards, to wit, on the 25th day of September, 1850, was filed in the clerk's office the following

Consent to bonding goods.

I do hereby consent that Paul Tricou may execute bond with Chauvin as surety, without a judicial order, to recover possession of a lot of hats and hat linings, seized by the collector of New Orleans for being imported in violation of the revenue laws of the United States; and such bond shall have the same force and effect as if made by virtue of an order of the U. S. district judge. The bond to be for the amount of appraisement filed in court.

(Signed) L. HUNTON, *U. S. attorney*,
By TOM HUNTON.

Sept. 25th, 1850.

Whereupon, on the 27th day of September, 1850, was duly filed and recorded the following

Bond for value on delivery.

UNITED STATES OF AMERICA,
Eastern district of Louisiana, to wit:

Know all men by these presents, that we, Paul Tricou and Louis Edward Chauvin, of New Orleans, are held and firmly bound unto the United States of America, in the full and just sum of three thousand four hundred and eight dollars, lawful money of the United States, to be paid to the said United States, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals and by us signed and dated, this twenty-seventh day of September, anno Domini one thousand eight hundred and fifty. Whereas, in the district court of the United States for the eastern district of Louisiana, there was, on the twenty-seventh day of July, 1850, filed by Logan Hunton, esq., U. S. attorney for the said district, and there now remains of record as suit No. 6692 of the docket, a certain information against nine cases of silk hats, libeled on behalf and in the name of the United States, for reasons and causes in the said information mentioned; and whereas, the said nine cases silk hats are now in the custody of the marshal of the said district, under the process issued in pursuance of the prayer in said information contained; and whereas, further, the domestic value of the said nine cases silk hats, as appears by the appraisement now on file in said court, is seventeen hundred and four dollars: Now, therefore, the condition of this obligation is such, that in case the said nine cases silk hats shall, by the sentence, decree, or judgment of the said court, be condemned as forfeited, if the said Paul Tricou and L's Edward Chauvin, or either of them, or the heirs, executors, or administrators of the said Paul Tricou and Louis Edward Chauvin, or of either of them, shall thereupon pay into the said court the said sum of seventeen hundred and four dollars, together with the costs, which the said Paul Tricou, as claimant of the said nine cases silk hats, ought by reason of the condemnation thereof

to pay, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) PAUL TRICOU, [SEAL.]
L. CHAUVIN, [SEAL.]

Sealed, signed and delivered in the presence of—
(Signed) J. HERNANDEZ.
Clerk's office, U. S. court, dist. Louis'a.

Collector's approval—annexed to bond.

CUSTOM-HOUSE, NEW ORLEANS,
Collector's Office, 27th Sept., 1850.

In conformity with the 89th section of the act of 2d March, 1799, I accept Mr. Louis Edward Chauvin as surety on the bond which Paul Tricou proposes to furnish to the United States district court, in order to obtain the nine cases of hats seized, considering him ample security.

(Signed) SAM'L J. PETERS, *Collector.*

1850, *September 27th.*

And thereupon, on the same day, was issued from the clerk's office to the marshal the following

Order of delivery.

UNITED STATES OF AMERICA,
Eastern district of Louisiana, ss.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Whereas, in the district court of the United States, in and for the eastern district of Louisiana, the nine certain cases silk hats by you attached on the 29th July, 1850, in the hands of Samuel J. Peters, esq., collector, under process sued out on information of the United States of America, have been duly claimed by Paul Tricou, of New Orleans; and after appraisement thereof had, have been bonded, with good and sufficient security, approved by the attorney of the United States, according to law; and the costs of suit up to this date having been paid, you are hereby commanded, conformably to law and the rules of the said court, to cause the said nine cases silk hats, five marked JJA, and numbered 11, 12, 13, 14, 15; two marked JJA, and numbered 29, 30; and two marked PT, and numbered 16, 17, to be delivered to the said Paul Tricou, claimant, on his producing and filing with you, as required by the 89th section of the act of 1799, a certificate from the collector and naval officer of this district, that the duties on said merchandise have been paid or properly secured, to the satisfaction of said officers; and hereon make return of your doings in the premises.

Witness the Hon. Theo. H. McCaleb, judge of the said court at New Orleans, this 27th day of September, A. D. 1850, and 75th year of the independence of the United States of America.

[SEAL.]

N. R. JENNINGS, *Clerk.*
(Signed) ROB'T M. LUSHER, *Dep. clerk.*

Marshal's return.

Rec'd Sept. 27, 1850, and on the same day gave order of release to P. Tricou, claimant, on his producing the within certificate and complying with the mandate of this court; and ret'd.

(Signed) N. W. BUTLER,
D'y U. S. marshal.

Certificate annexed to order, and referred to in ret'n.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office.

This is to certify, that Messrs. Albert and Tricou have paid into this office the sum of four hundred and forty-two $\frac{50}{100}$ dollars, being amount of duties on nine cases hats, imported by them per ship Pyramid from Havre, entered June 14th, 1850. This certificate not to affect the suit pending before the United States district court. Given under my hand and seal of office, this tenth day of October, 1850.

[SEAL.] (Signed) J. W. HINCKS,
Acting collector.

And afterwards, to wit, on the 10th of March, 1850, was duly recorded on the minutes the following order fixing cause:

1851, February term.—Stated sessions.

MONDAY, *March 10th*, 1851.

Present, honorable Theodore H. McCaleb.

THE UNITED STATES
vs.
NINE CASES SILK HATS. } 6692.

The docket of cases now at issue having, pursuant to notices issued, been called, the above was on motion of Logan Hunton, esq., U. S. district attorney, fixed for Tuesday, 18th March, A. D. 1851.

And afterwards, to wit, on the 14th March, 1851, was filed in this office the following

Answer.

United States district court, eastern district of Louisiana.

THE UNITED STATES OF AMERICA
vs.
NINE CASES SILK HATS.

The answer and pleas of Paul Tricou, the claimant in the above entitled cause, humbly shows that he denies all and singular the allegations in said libel of information contained, tending in any manner to show that the goods, wares, and merchandise, against which the libel in this cause has been filed, have been, or ought to be forfeited to the United States. And further answering, respondent pleads that a

penalty has already been exacted from and paid by him to the libellants for and on account of the several matters and things charged in said libel of information, as cause of forfeiture of said goods, wares, and merchandise; whereby and by reason whereof said libellants are stopped in law from claiming the forfeiture of said goods, wares and merchandise, and because under the laws of the United States two penalties cannot be enforced for the same offence. Wherefore this respondent prays for judgment in his favor and for all other just relief in the premises.

(Signed) BENJAMIN & MICOU,
For respondent.

And afterwards, to wit, on the 18th day of March, A. D. 1851, was duly recorded on the minutes of said court the following

Continuance.

TUESDAY, *March* 18*th*, 1851.

Present, honorable Theodore H. McCaleb.

THE UNITED STATES
vs.
NINE CASES OF SILK HATS. } No. 6692.

This case by consent continued until further notice.

And afterwards, to wit, on the 19th day of May, 1851, being at the May term of said court, was duly recorded on the minutes the following

Order fixing cause.

1851, May term.—Stated sessions.

MONDAY, *May* 19*th*, 1851.

Present, honorable Theodore H. McCaleb.

THE UNITED STATES
vs.
NINE CASES OF SILK HATS. } No. 6692.

The docket of pending suits having been called, the above was on motion of Logan Hunton, U. S. Dist. attorney, fixed for trial for the 28th instant.

And thereafter, to wit, on the 28th day of May, A. D. 1851, was entered on the minutes the following

Continuance.

WEDNESDAY, *May* 28*th*, 1851.

Present, honorable Theodore H. McCaleb.

THE UNITED STATES
vs.
NINE CASES OF SILK HATS. } No. 6692.

This case having been called up for trial, and no jury being yet em-

panneled, it was on motion of the United States attorney ordered that it be continued until further notice.

And afterwards, to wit, on the 30th day of May, 1851, was duly recorded on the minutes of said court the following

Opening of trial of issue.

1851, May term.—Stated sessions.

FRIDAY, *May 30th*, 1851.

Present, honorable Theodore H. McCaleb.

THE UNITED STATES
vs.
NINE CASES OF SILK HATS. } No. 6692.

This cause having been called up for hearing: present, Logan Hunton, esqr., U. S. attorney, and William C. Micou, esqr., of counsel for the claimant, Paul Tricou; and the court, in the absence of a sufficient number of jurors, having ordered talesmen to be brought in, the following named eleven (by consent of counsel) jurors were duly sworn and empanneled to try the issue:

Jury.—G. N. Patterson, Thomas McCormick, J. B. Dupene, J. Potter, A. H. Donaldson, Edward Dayries, Franc'o Degrais, F. H. Thornhill, M'i Farrell, John George and Luther Harris, (talesmen.)

Note.—Mr. Heberstreet, when called to the book, excused himself, and was by consent excused.

The cause having been explained, as appearing from the information and answer and plea of record, various custom-house documents were offered in evidence and admitted after argument, and the following named witnesses sworn and examined on behalf of the United States, viz: R. F. Canfield, (U. S. appraiser,) Auguste Meteye, (interpreter of letter read,) Auguste Meteye, deputy appraiser, L. Janin and A. Drez, hatters of the city, (Julien Bourry interpreting their testimony.) The claimant offered no testimony. The argument in the facts of the case, and the law bearing thereon, was then opened by the U. S. attorney, who was followed by Mr. Micou, for the claimant. The latter counsel, without addressing himself to the facts of the case, cited the opinion of the court heretofore expressed on the 21st, 25th March, 1850, in the case of the United States vs. 67 Packages of dry goods, (No. 6621,) as conclusive herein against the demand of the libellants, and asked the court to charge the jury as it had done in said case; that there is now no law in force whereby the nine cases silk hats, now in question, can be decreed forfeited to the United States conformably to the prayer of the libel. The attorney of the United States continued the argument in reply, combatting the plea filed by the claimant, and urging a review of the opinion referred to by the proctor for said party; when at the hour of 3 o'clock p. m. the further hearing of the matter was continued, and the jury discharged until to-morrow, the 31st inst., 10 o'clock a. m.

And afterwards, to wit, on the 31st May, 1851, was duly entered of record the following resumption and conclusion of trial:

SATURDAY, *May* 31*st*, 1851.

Present: Hon. Theo. H. McCaleb.

The UNITED STATES vs. NINE CASES OF SILK HATS. } No. 6692.

On call duly made, the jury herein empanneled and sworn on yesterday, being present, the hearing of this cause was resumed, Messrs. Hunton and Micou appearing.

The attorney of the United States, continuing his argument in reply to the proctor for claimant, raised the point, that the matters of law involved in the instructions asked for should have been pleaded on the record, and, after citing authorities on the subject, concluded by asking the court to charge the jury that it was empowered to bring in a special verdict on the facts of the case submitted to it apart from the questions of law. The court then charged the jury conformably to the views expressed in the case of the United States vs. 67 Packages of dry goods, No. 6621, but also instructed it that it was fully empowered, if it thought proper, to bring in a special verdict on the facts of the case as revealed by the testimony offered.

Whereupon, G. N. Patterson, having been appointed foreman, the jury retired to consider. The United States attorney here tendered his bill of exceptions to the charge of the court ruling that no decree of forfeiture can be pronounced in this case. After some time spent in consultation, the jury returned into court, and on due call of the panel made, through its foreman, the following report as a special verdict:

"We, the jury, find on our oaths, that the said nine cases or packages of hats were imported from a foreign country and entered at the custom-house at the port of New Orleans, and were made up by a false valuation with the design and intent to defraud the revenue of the United States.

"GEO. N. PATTERSON, *Foreman.*

"New Orleans, May 31, 1851."

Said verdict having been read and verified, the jurors present were discharged indefinitely.

William C. Micou, esq., of counsel for the claimant, now moved that, conformably to the opinion of the court, judgment be entered up for the claimant, and the libel of information dismissed. And L. Hunton, esq., U. S. attorney, moved the court that judgment be entered up for the United States. When said motions were respectively taken under advisement.

Bill of exceptions referred (to) in the foregoing entry.

UNITED STATES
vs.
NINE CASES OF SILK HATS. } 6692.

Be it remembered, that on the trial of this case, after the United States had offered in evidence the entry, invoices, appraisements, and letters of the claimant, and had also offered evidence touching the value and actual cost of goods, wares, and merchandise in the information mentioned, the court, on the motion of the counsel for the claimant, instructed the jury as follows:

1st. That the 66th section of the act of Congress of the 2d March, 1799, in so far as it imposes the penalty of forfeiture of any goods, wares, and merchandise of which entry shall have been made in the office of a collector, and which shall not be invoiced according to the actual cost thereof, is inconsistent with and repugnant to the 13th and 15th sections of the act of 1st March, 1823, imposing a penalty of additional duties entered under fraudulent invoices, and in so far as said inconsistency and repugnancy existed, the said act of 1799 was repealed by said act of 1823.

2d. That the said 66th section of the act of Congress of the 2d March, 1799, was to the same extent as aforesaid repugnant to and inconsistent with the 17th section of the act of 30th August, 1842, and is to the same extent repealed by said act of 1842.

3d. That the proceedings directed and authorized by the 17th section of the act of 1842, having been proved by the United States to have taken place against the merchandise herein alleged to be forfeited to the Government, it was the duty of the collector to have levied and collected the additional duty which by said 17th section is imposed as a penalty on goods which shall be appraised, estimated, and ascertained to exceed the invoice value; that said penalty is inconsistent with and repugnant to the penalty of forfeiture as imposed by any preceding law of Congress; that the said section of said act of 1842, and the other section of said last named act, do by implication repeal all previous provisions of all acts of Congress imposing the penalty of forfeiture of merchandise which is falsely valued in an invoice, or of which the actual cost has not been stated in the invoice under which their entry is made. And also instructed the jury that there was at present no law in force authorizing the forfeiture of the said goods for the causes set forth in the libel; to which instructions the attorney of the United States excepts, and prays that this bill of exceptions be signed, sealed, and made of record.

(Signed) THEO. H. McCALEB. [SEAL.]

And afterwards, to wit, on the 5th June, 1851, was duly entered on the minutes of said court the following

Judgment.

1851, May term.—Stated sessions.

THURSDAY, *June* 5, 1851.

Present, Hon. Theo. H. McCaleb.

The UNITED STATES vs. NINE CASES SILK HATS. } No. 6692.

The court on a due consideration of the special verdict of the jury found herein on the 31st ultimo, and of the acts of Congress regulating the collection of duties, penalties, fines, forfeitures, &c., doth now order and decree, and it is hereby ordered and decreed, that for the legal reasons embodied in the bill of exceptions, the information of the United States be dismissed.

Signed, June 10th, 1851.

THEO. H. McCALEB, *U. S. judge.*

Finis.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

I, N. R. Jennings, clerk of the district court of the United States for said district, sitting at New Orleans, do hereby certify that the foregoing twenty-four folios, the above nine lines of manuscript annexed to a certain original writ of error issued out of the circuit court of the U. S. for said district, over date June 12th, 1851, contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents and other matters on file and of record in said court, in a certain cause at common law, wherein the United States of America are libellants, and Paul Tricou, as claimant of nine cases of silk hats, libeled for forfeiture, is respondent, No. 6692 of the docket of said court.

In testimony whereof, I hereunto set my hand and affix the seal of the said court, at New Orleans, this fifteenth day of December, A. D. 1851, and 76th year of American independence.
[SEAL.]

N. R. JENNINGS, *Clerk.*

I, Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, do certify that N. R. Jennings, who subscribed the certificate on the reverse hereof, was, at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court, that full faith and credit are due and ought to be given to all his attestations as such clerk, and that his said certificate is in due form of law.

In testimony whereof, I hereunto set my hand and seal, at New Orleans, this 15th day of December, A. D. 1851.
[SEAL.]

THEO. H. McCALEB.

892.

Further proceedings in the circuit court of the United States, fifth circuit and eastern district of Louisiana,

On the fourth day of May, A. D. 1853, the cause was submitted to the court, and an entry thereof made on the minutes of that date as follows:

UNITED STATES, plaintiffs in error,
vs.
67 PACKAGES OF DRY GOODS, Paul Tricou, claimant. } No. 2037.

This cause, involving the same questions as that of the United States vs. 69 Packages of dry goods, this day argued, was, by consent of parties, submitted to the court without further argument, and taken under advisement.

And on the 19th day of May, 1853, the court rendered a final decree in the case, which was duly entered of record in the minutes, and on the 25th day of May, 1853, the said final decree was recorded in the judgment docket, and signed in the words and figures following, to wit:

NEW ORLEANS, *Thursday*, 19*th May*, 1853.

Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge; absent, Hon. Theo. H. McCaleb, district judge.

UNITED STATES, plaintiffs in error,
vs.
NINE CASES SILK HATS, Paul Tricou, claimant. } No. 2037.

This cause came on to be heard at this term of the court on the transcript of the record from the district court, and was argued by counsel; on consideration whereof it is ordered, adjudged and *and* decreed that the judgment of the district court be affirmed.

Judgment rendered 19th May, 1853.
" signed 25th May, 1853.

J. A. CAMPBELL, *Judge*.

Petition for writ of error, filed 2d June, A. D. 1853.

To the honorable the circuit court of the United States for the 5th circuit and eastern district of Louisiana:

The petition of the United States of America, by their attorney, E. W. Moise, respectfully represents that judgment has been rendered against them in this honorable court in the case of the United States vs. Nine cases of silk hats, Paul Tricou, claimant, whereby they are aggrieved, and are advised there is error therein to their great prejudice; wherefore they pray that a writ of error may be allowed them returnable to the next term of the Supreme Court of the United States.

E. WARREN MOISE, *U. S. attorney*.

Order granting writ of error, recorded on the minutes of date June 2, A. D. 1853, as follows:

Present, Hon. J. A. Campbell.

THE UNITED STATES, plaintiffs in error,
vs.
NINE CASES SILK HATS, Paul Tricou, claimant. } No. 2037.

On motion of E. W. Moise, U. S. district attorney, and on presenting and filing petition on behalf of the plaintiffs, representing that said plaintiffs are aggrieved by the judgment herein rendered against them, and praying a writ of error therefrom, it is ordered that the writ be allowed as prayed for, returnable to the next term of the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Circuit court of the United States.

Fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 19 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had in the case of the United States, pl'ffs in error, *vs.* Nine Cases Silk Hats, Paul Tricou, claimant, No. 2037 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Or-
[SEAL.] leans, this 10th day of June, A. D. 1853.

J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 10th day of June, A. D. 1853.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you,

or one of you, between the United States of America and Nine Cases of Silk Hats, Paul Tricou, claimant, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this second of June, in the year of our Lord one thousand eight hundred and fifty-three.

J. W. GURLEY,
Clerk of the United States circuit court
for eastern district of Louisiana.

THE UNITED STATES OF AMERICA.

The President of the United States, to Paul Tricou, claimant of nine cases of silk hats, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second day of June, in the year of our Lord one thousand eight hundred and fifty-three.

J. A. CAMPBELL, *Judge, &c.*

Marshal's return.

Received June 2d, 1853; and on the third of June, 1853, I served a copy of citation in error on Mr. Paul Tricou, by leaving the same at his counting-house or store, in the hands of Mr. Albert, his partner, in the city of New Orleans.

CH. DE ARMAS, *Dep'y U. S. M.*